

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE NORTH FACE APPAREL CORP.,)	
A Delaware Corporation)	
)	
v.)	Case no. 4:09-cv-02029
)	
WILLIAMS PHARMACY, INC., et al.)	

**DEFENDANTS' MEMORANDUM IN RESPONSE TO COURT'S OCTOBER 10, 2012
ORDER**

COMES NOW James A. Winkelmann, Jr. ("Jimmy"), James A. Winkelmann, Sr. ("Jim"), and Why Climb Mountains, LLC ("WCM") (collectively, "Defendants"), by and through their undersigned counsel, and for their Memorandum in Response to Court's October 10, 2012 Order, state as follows:

This Court entered its October 10, 2012 Order (Doc. 110) directing the parties to provide supplemental briefs which set out the standards the Court should apply when deciding the issue of whether the THE BUTT FACE marks are a "colorable imitation" of the THE NORTH FACE marks. The Court notes that the 9th Circuit determined that the district court's visual inspection was sufficient, in connection with counsels' arguments, to determine whether the terms of the consent injunction have been violated. The Court further directed the parties, if they disagree with this standard, to explain why and provide the Court with a proposed alternative standard to apply.

Accordingly, the memorandum shall serve as Defendants' supplemental brief confirming that the Defendants agree with the standard set forth by the Court in its October 12, 2012 Order. It is Defendants expectation that this matter will be resolved prior to any hearing, but that if it is not resolved, Defendants are agreeable to the Court applying the visual inspecting and listening

to counsel's arguments to determine whether THE BUTT FACE is a "colorable imitation" of THE NORTH FACE.

KODNER WATKINS KLOECKER, LC

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CERTIFICATE OF SERVICE

Signature above is also certification that on October 12, 2012 a true and correct copy of the foregoing was electronically filed with the Clerk of the Court utilizing the CM/ECF system which will send notification of such filing to all counsel of record.